

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

SANDY J. BATTISTA,	)	
Plaintiff,	)	
	)	
VS.	)	
	)	
KATHLEEN M. DENNEHY,	)	
Commissioner; ROBERT MURPHY,	)	CIVIL ACTION No. 05-11456-DPW
Superintendent; STEVEN FAIRLY, Director	)	
of Security; SUSAN J. MARTIN, Director of	)	
Health Services; GREGORY J. HUGHES,	)	
LICSW; and UMASS CORRECTIONAL	)	
HEALTH PROGRAM, sued in the	)	
individual and official capacities,	)	
Defendants.	)	

**MOTION OF THE DEFENDANT, UMASS CORRECTIONAL HEALTH PROGRAM,  
TO DISMISS PURSUANT TO MASS. R. CIV. P. 12(b)(6)**

Now comes the defendant, UMass (University of Massachusetts) Correctional Health Program (“UMCHP”), and moves to dismiss the plaintiff’s Complaint pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief may be granted.

In support of this motion, the defendants state that the plaintiff has brought this action in Federal Court against five people in their individual and official capacities, as well as against UMCHP (which is an agency of the Commonwealth of Massachusetts), seeking to recover money damages and injunctive relief for alleged violations of state and federal constitutional, statutory, administrative and common law. More specifically, the plaintiff has alleged, among other things, that she<sup>1</sup> has been denied appropriate treatment for gender identity disorder while she has been incarcerated and in the custody of the Commonwealth Of Massachusetts Department Of Corrections (“DOC”), pursuant to an adjudication as a Sexually Dangerous Person under Mass. G.L. c. 123A. The Complaint alleges that the defendants’ actions have

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<sup>1</sup> The plaintiff is anatomically a male. However, the plaintiff prefers to be referred to as a female and that preference is acknowledged in this motion and the accompanying memorandum in support.

deprived her of rights to substantive due process and equal protection and have constituted cruel and unusual punishment under the Eighth Amendment to the United States Constitution.

The plaintiff's Complaint against UMCHP should be dismissed because it is a state agency and, as such, any claims for injunctive or monetary relief against it in Federal Court are barred by the Eleventh Amendment to the United States Constitution.

WHEREFORE, the defendant, University of Massachusetts Correctional Health Program, respectfully requests that this Court dismiss the plaintiff's Complaint pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief may be granted.

Respectfully submitted,

/s/ Stephen M. O'Shea

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**CERTIFICATE OF SERVICE**

I, Stephen M. O'Shea, attorney for defendant, University of Massachusetts Correctional Health Program, hereby certify that on this 10th day of August 2005, a copy of the foregoing was sent by **first class mail, postage prepaid to:** Sandy J. Battista M 15930, Pro Se, Massachusetts Treatment Center, 30 Administration Road, Bridgewater, MA 02324-3230 **and a copy electronically forwarded** to Richard C. McFarland, Esq., Department of Corrections Legal Division, 70 Franklin Street, Suite 600, Boston, Massachusetts 02110.

/s/ Stephen M. O'Shea

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